



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FCP/145655

PRELIMINARY RECITALS

Pursuant to a petition filed December 03, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milw Cty Dept Family Care in regard to Medical Assistance, a hearing was held on January 29, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the DHA has legal authority to direct the managed-care organization to contract directly with the specific individual Petitioner has chosen to perform personal services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Rosaida Shrank
Milw Cty Dept Family Care
Milwaukee, WI

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner is a Family Care participant.
3. Petitioner's home health care agency does not provide staff to perform personal cares that are needed by Petitioner. Petitioner does, however, have an individual from whom she wishes to

receive these cares. The assigned home health care agency does, however, hire the individual chosen by the FCP participant to provide the cares.

4. The individual Petitioner wishes to have perform the personal cares needed by Petitioner wants to be an independent contractor and has declined to be hired by the home health agency.
5. This appeal was filed by Petitioner seeking an order from the Division of Hearings and Appeals directing the case management organization – the Milwaukee County Department of Family Care (MCDFC) to contract directly with the individual chosen by Petitioner. The MCDFC does not, at this time, have processes in place to contract with individual, independent contractors. It is working on creating a process or system to do so. There is no date by which that is anticipated to be available.
6. The personal cares needed by Petitioner have not been denied by the FCP; rather this is solely a dispute about the CMO contracting with an individual who wants to be an independent contractor.

DISCUSSION

The Division of Hearings and Appeals can only exercise authority that has been delegated to it. With respect to Family Care the Wisconsin Administrative Code delegates hearing authority where the appeal is directly to the Division of Hearings and Appeals as follows:

...

- (a) Denial of eligibility under s. DHS 10.31 (6) or 10.32 (4).
- (b) Determination of cost sharing requirements under s. DHS 10.34.
- (c) Determination of entitlement under s. DHS 10.36.
- (d) Failure of a CMO to provide timely services and support items that are included in the plan of care.
- (e) Reduction of services or support items in the enrollee's individualized service plan, except in accordance with a change agreed to by the enrollee.
- (f) An individualized service plan that is unacceptable to the enrollee because any of the following apply:
 1. The plan is contrary to an enrollee's wishes insofar as it requires the enrollee to live in a place that is unacceptable to the enrollee.
 2. The plan does not provide sufficient care, treatment or support to meet the enrollee's needs and identified family care outcomes.
 3. The plan requires the enrollee to accept care, treatment or support items that are unnecessarily restrictive or unwanted by the enrollee.
- (g) Termination of the family care benefit or involuntary disenrollment from a CMO.
- (h) Determinations of protection of income and resources of a couple for maintenance of a community spouse under s. DHS 10.35 to the extent a hearing would be available under s. 49.455 (8) (a), Stats.
- (i) Recovery of incorrectly paid family care benefit payments as provided under s. DHS 108.03 (3).
- (j) Hardship waivers, as provided in s. DHS 108.02 (12) (e), and placement of liens as provided in ch. HA 3.
- (k) Determination of temporary ineligibility for the family care benefit resulting from divestment of assets under s. DHS 10.32 (1) (i).

...

Wis. Admin. Code, § DHS 10.55(1); also see Stats., §46.287.

Here the personal cares needed by Petitioner have not been denied by the FCP; rather this is a dispute about the MCO contracting capabilities. The CMO notes that it is working on a process/system/set of procedures for contracting with individuals but that there are a host of issues that must be worked out before it can do that. Those issues are not specific to Petitioner; rather, they apply to all Family Care

participants in Milwaukee County. Among the concerns and considerations are quality control, training, liability, workers compensation and overall program integrity. I note that the DHS Family Care website indicates that the MCDFC had just under 8,000 enrollees as of the last quarter of 2012. See <http://www.dhs.wisconsin.gov/LTCare/Generalinfo/enrollmentdata.pdf>. The issues confronting the MCDFC as to individual contracting and having staff and resources to monitor this are not insignificant.

The Standard Contract (Contract) between the Department of Health Services and the CMOs does require that a CMO have a process by which it considers a request for a non-CMO provider but does not have to consider any non-CMO provider that does not meet the CMO's standards. See *Standard Contract, §VIII.A.5a*. I also note that the Contract provides significant detail as to how CMOs manage their FCP responsibilities and, globally, the document directs communication between the CMO and the Department as to contracting and subcontracting for services. There is no delegation of authority to the Division of Hearings and Appeals as to the issue presented here.

In reviewing the law and Contract involved here, I cannot find that the Division of Hearings and Appeals has any authority to direct the CMO here to contract with a specific provider. Further, *P etitioner has not pointed to any law or rule or Contract provision that indicates that Division of Hearings and Appeals possesses such authority.*

CONCLUSIONS OF LAW

That the Division of Hearings and Appeals does not have authority to direct a case management organization to contract with a specific individual or subcontractor.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

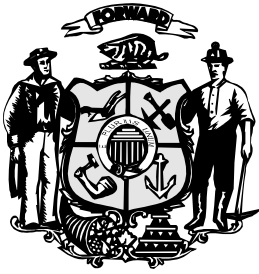
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 27th day of February, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 27, 2013.

Milw Cty Dept Family Care
Office of Family Care Expansion